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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

Nos. 1185 and 1186

GUSSIE JOFFE,

Petitioner,

v.

SIDNEY H. JOFFE,

Respondent.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY AND TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITIONER'S REPLY MEMORANDUM

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April 23, 1968

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Pursuant to Rule 24(4), which provides that reply briefs "addressed to arguments first raised in the briefs in opposition may be filed," petitioner files this reply memorandum addressed to certain arguments first raised in the respondent's two briefs in opposition.

No. 1185

In the New Jersey contempt case, No. 1185, the respondent's brief contends (at page 14) that the petitioner is barred from contesting the validity of the New Jersey restraining orders at this contempt juncture since she took no action to contest or appeal from the original restraining orders. Such an argument must fail for two reasons:

(1) As indicated in the chronology of the New Jersey proceedings set forth in the Petition in No. 1185, the petitioner wife repeatedly protested that the New Jersey restraints violated the Full Faith and Credit Clause of the United States Constitution.[1] But none of those protests resulted in any ruling on the validity of the restraints, in a form that could be considered final and appealable, until Judge Concilio's opinion and order of August 24, 1964. See Petition, Appendix B. There, for the first time, petitioner's objections to the restraints were overruled and the Full Faith and Credit Clause was held not to bar the issuance of the New Jersey restraints.

But even that ruling lacked finality in that the then pending orders to show cause why petitioner should not be held in contempt were referred to other judges for determination. See Pet. App., p. B-24. Not until the contempt orders were entered (Pet. App. pp. C-1 to C-5) did the necessary appealable finality appear. And by that time, the final contempt orders plainly encompassed and incorporated the ruling as to the impact of the Full Faith and Credit Clause rendered by Judge Concilio. Hence the petitioner took every conceivable step to protest the original New Jersey restraints[2] and promptly appealed from the ruling as to their validity as soon as a final and appealable order was entered.

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[1] See items numbered (3), (4), (8), (9), and (11) in the New Jersey Superior Court chronology of events. Petition, pp. 11-17.

[2] The respondent persistently submitted the New Jersey restraints to the New York courts, which consistently ignored them as of no legal effect. Petitioner understandably relied upon this attitude of the New York courts to support her position that the New Jersey restraints were invalid under the Full Faith and Credit Clause.

(2) Equally significant is the fact that neither the Supreme Court of New Jersey nor the Appellate Division of the Superior Court declined to pass upon the federal full faith and credit issues because of any asserted failure to appeal from the earlier restraints.[3] Recognizing that the contempt orders were enmeshed with the ruling as to the validity of the restraints, those courts affirmed not only the contempt findings but also ruled that there was "nothing in the record to establish that at the time the Chancery Division action was commenced the New York court had personal jurisdiction over the plaintiff or the marital *res*." Pet. App., p. A-2. In other words, the Full Faith and Credit Clause was held not to bar the New Jersey restraints in this case.

Thus it is in the context of a fully developed and litigated dispute under the Full Faith and Credit Clause that the New Jersey case reaches this Court. Nothing that respondent has said in his opposition brief detracts from the reasons why certiorari should be granted.

No. 1186

The respondent's brief in opposition totally ignores the basic question presented by the Third Circuit's opinion—whether a federal court in an *Erie* situation is independently obligated to determine the degree of faith and credit it will give to a foreign judgment, or whether it must rely upon the faith and credit given by the court of the state in which the federal court sits. The reasons for the grant of certiorari to determine that recurring issue are unaffected by respondent's opposition.

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[3]The respondent did indeed argue the point on the appeal but his contention was pointedly ignored by both appellate courts. And in any event, New Jersey recognizes that injunctive restraints may always be attacked, subsequent to their issuance, on jurisdictional grounds. See *Lawrence v. Lawrence*, 79 N.J. Super. 25 (App. Div.), affirmed, 36 N.J. 549. If the prior New York judgments were entitled to full faith and credit, the New Jersey restraining orders had no jurisdictional basis.

But respondent's brief (page 15) does suggest as a reason for denying certiorari that the federal courts here acted to prevent a multiplicity of suits and a duplication of judicial time. But nothing that the Third Circuit or the District Court did or said justifies any such argument. Moreover, even if the obligation to give full faith and credit to foreign judgments produces different results in different jurisdictions, the resulting multiplicity is not one outlawed by the demands of full faith and credit. Any inconsistencies in results must then be cured through the appellate processes, including those of this Court.

CONCLUSION

For these reasons, supplementing those in the Petitions, the writs of certiorari should issue as requested.

Respectfully submitted,

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